

November 8, 2012. Thereafter, defendants, New England Compounding Pharmacy, Inc., d/b/a New England Compounding Center, Barry J. Cadden, Lisa Conigliaro Cadden, and Gregory A. Conigliaro filed a Notice of Removal of the action in this Court on December 10, 2012, alleging, *inter alia*, that “there is total diversity between the plaintiffs and the defendants as required by 28 U.S.C. § 1332(a) [so as to provide for original jurisdiction]” and “the instant matter presents a central and substantial federal question [as required for original jurisdiction under 28 U.S.C. § 1331].”

2. 28 U.S.C. § 1441(a) provides generally that all cases in which a federal district court has original jurisdiction, such as diversity jurisdiction under 28 U.S.C. § 1332 or federal question jurisdiction under 28 U.S.C. § 1331, may be removed to federal court by the defendant or defendants.

3. 28 U.S.C. § 1446 (b)(2)(A) provides, in pertinent part:

When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

4. Nowhere in the defendants’ Notice of Removal do they allege that this action is removable on any basis other than 28 U.S.C. § 1441(a).

5. As is clear from the defendants’ Notice of Removal, only New England Compounding Pharmacy, Inc., d/b/a New England Compounding Center, Barry J. Cadden, Lisa Conigliaro Cadden, and Gregory A. Conigliaro gave notice of their removal. Ameridose, LLC, additionally filed a Notice of Consent to Removal.

6. Carla R. Conigliaro and Glen A. Chin, have not joined in the removal. Additionally, neither of these defendants has filed a written consent to removal.

7. Therefore, the defendants' Notice of Removal is defective and the instant action should be remanded to the Cumberland County, Tennessee, Circuit Court for failure to comply with the rule of unanimity, as adopted by the Sixth Circuit, which requires all defendants to either join in the removal or file written consent to removal.

WHEREFORE, plaintiffs respectfully request that the action presently before the Court be remanded to the Circuit Court for Cumberland County, Tennessee.

Respectfully submitted,

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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, Robert E. Pryor, hereby certify that on January 8, 2013, plaintiffs' Motion to Remand to State Court was filed electronically with the United States District Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U. S. mail. Parties may access this filing through the Court's electronic filing system.

s/Robert E. Pryor, Sr.
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